

## CHAPTER 75-03-08 FAMILY CHILD CARE EARLY CHILDHOOD SERVICES

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**75-03-08-01. Purpose.** Repealed effective January 1, 2011.

**75-03-08-02. Authority and objective.** Repealed effective January 1, 2011.

**75-03-08-03. Definitions.** The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the family child care.
2. "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
3. "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
4. "Infant" means a child who is younger than twelve months of age.
5. "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
6. "Provider" means owner or operator of a family child care.
7. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
8. "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**75-03-08-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a family child care is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.

2. The current license must be displayed prominently in the premises to which it applies.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

#### **75-03-08-05. Denial or revocation of license.**

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the provider may continue the operation of the family child care pending the final administrative determination or until the license expires, whichever occurs first, unless continued operation would jeopardize the health and safety of the children attending the family child care. This subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a family child care without first issuing a correction order, or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

**75-03-08-05.1. Family child care license.** The right to operate a licensed family child care is dependent upon continuing compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07

#### **75-03-08-06. Provisional license.**

1. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional

license for the operation of a family child care although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.

2. A provisional license must:
  - a. State that the provider has failed to comply with all applicable standards and rules of the department;
  - b. State the items of noncompliance;
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance as the provisional license, after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or provider who has waived, in writing:
  - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
  - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the regional director's designee and must be acknowledged in writing by the provider.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded to the holder of an unrestricted license.
6. The department may not issue a provisional license if the family child care is not in compliance with section 75-03-08-14.
7. The provider shall prominently display the provisional license and agreement.

8. The provider shall provide parents written notice that the family child care is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-08-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specified outdoor space of the residence.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-08-07. Application for and nontransferability of family child care license.**

1. An application for a license must be submitted to the authorized agent in the county in which the family child care is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only for the premises indicated on the license. A new application for a license must be filed upon change of provider or location.
3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to licenses issued on or after January 1, 2011. Existing operators will be exempt from this provision

until January 1, 2016, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-08-08. Family child care homes registered prior to effective date.**  
Repealed effective January 1, 1987.

**75-03-08-08.1. Duties of the provider.**

1. A provider shall maintain, whenever services are provided, at least one staff member who:
  - a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
  - b. Is certified or trained in a department-approved program to provide first aid.
2. Substitute staff are exempt from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.
3. The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.
4. A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
5. The provider shall report to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;

- b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
  - c. Poisonings or errors in the administration of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the family child care.
- 6. The provider shall develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive for the program.
  - 7. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
  - 8. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
  - 9. The provider shall select an emergency designee.
  - 10. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
  - 11. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
  - 12. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-09. Staffing requirements.** Staffing requirements are established by the number of children physically in care at the family child care at any given time, rather than total enrollment.

1. A provider may provide care to no more than a total of four children if all are under age twenty-four months.
2. A provider providing care to five or more children may provide care to no more than three children under age twenty-four months.
3. If a child with special needs is admitted to the program, the child's developmental age level must be used in determining the number of children for which care may be provided.
4. Children using the family child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

**75-03-08-10. Minimum qualifications of providers.** A provider shall:

1. Be at least eighteen years of age;
2. Complete a department-approved basic child care course during the first three months of licensure; and
3. Certify completion of a minimum of nine hours of department-approved training related to child care every licensing year.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-11. [Reserved]**

**75-03-08-12. Minimum qualifications for all staff members responsible for caring for or teaching children.** Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;



3. Complete a department-approved basic child care course during the first three months of employment; and
4. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-12.1. Minimum qualifications of volunteers.** If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-13. Minimum health requirements for all applicants, providers, and staff members responsible for caring for or teaching children.**

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, provider, or staff member appears questionable, the department may require the individual to present evidence of the individual's capability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member or household member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-14. Minimum requirements of the facility.**

1. The family child care must contain adequate space, indoors and out, for the daily activities of the children. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy.

2. The family child care must be clean and maintained to protect the health and safety of children. The family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Garbage must be regularly removed.
3. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The provider shall ensure that the family child care is equipped with one properly installed smoke detector located in each sleeping area used by the children, and one properly installed smoke detector and one fire extinguisher per level. Properly installed means installed according to manufacturer's or fire inspector's directions.
5. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
6. The provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts. A provider caring for a child between the hours of eight p.m. and six a.m. shall ensure that the child has an individual sleeping place.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized.

as much as possible without damaging the integrity or educational value of the item.

11. The provider shall ensure that exit doorways and pathways are not blocked.
12. The provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. The family child care must have an indoor bathroom with a minimum of one sink and one flush toilet.
14. The family child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. If the fire, safety, health, or sanitation environment of the family child care appears questionable, the department or authorized agent may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the authorized agent. The provider shall obtain fire and safety inspections prior to licensure if the family child care is located in a manufactured home, a mobile home, an apartment building, a home in which care is provided to children in the basement, or a home having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces. Any inspection fees are the provider's responsibility. The provider shall ensure that any problems found are corrected.
16. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
17. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-08-15. Minimum standards for provision of transportation.**

1. Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the family child care, if the family child care provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the family child care. If the family child care provides transportation, the provider shall inform the parents of any

insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a family child care, children must be protected by adequate staff supervision and safety precautions.
  - a. Staffing requirements must be maintained to assure the safety of children while being transported.
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct appropriate to their age and stage of development.
4. The driver shall be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-16. Minimum emergency evacuation and disaster plan.**

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
  - c. What will be done if the family child care has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed monthly.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-17. [Reserved]**

**75-03-08-18. [Reserved]**

### **75-03-08-19. Admission procedures.**

1. The provider shall request a preadmission visit with the child and the child's parents to acquaint the child and the parent with the family child care and its surroundings, the other children, and the provider.
2. The provider shall inform parents about the child care program, places and times of special activities outside the family child care, policies, and emergency procedures, and shall discuss information concerning the child to identify and accommodate the child's needs. An explanation of how accidents and illnesses may be dealt with must be provided, as well as methods of discipline and developmentally appropriate techniques to be used.
3. The provider shall notify parents of the payment rates and the time of payment.
4. The provider shall provide parents with unlimited access and opportunities to observe their children at any time their children are in care. This does not prohibit a provider from locking the doors of the family child care while children are in care.
5. The provider shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
6. The provider shall inform parents that they may request daily reports for their child, including details regarding eating, napping, and diapering.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-08

### **75-03-08-20. Program requirements.**

1. The provider shall have a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care. The program must include activities that foster sound social, cognitive, emotional, and physical growth, developed in consultation with parents as to their children's needs. A written daily routine, including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time shall be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.
2. The program must be designed with intervals of stimulation and relaxation and a balance between periods of active play and quiet play

or rest. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.

3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each family child care shall have enough play materials and equipment so each child in attendance may be involved individually or as a group.
4. Areas used for napping must provide an opportunity for undisturbed rest. The provider shall set napping schedules for children according to the children's ages and needs.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-21. Minimum standards for food and nutrition.** A provider shall serve children nutritious meals or snacks according to the following requirements:

1. When the provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours in a sanitary manner.
2. When parents bring sack lunches for their children, the provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. When a child is in care for more than three hours, that child shall receive either a snack or a meal, whichever is appropriate to that time of day.
4. Children in care during any normal mealtime hour must be served nutritious food appropriate to that time of day.
5. Children in care after school shall be provided with a snack.
6. Information provided by the children's parents regarding special diets, allergies, or other dietary conditions shall be adhered to in the feeding schedule and planning of menus.
7. The provider shall serve snacks and meals to children in a manner commensurate with their development, using appropriate foods, portions, dishes, and eating utensils.

8. The provider or staff member may encourage children to eat the food served, but the provider or staff member may not coerce or force-feed children.
9. The provider shall post a daily or weekly menu for meals and snacks.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-21.1. Minimum sanitation and safety requirements.**

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
3. The provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
4. The provider shall ensure at least one department-approved first-aid kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
5. The provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
6. If children in care require medication, the provider shall secure written permission and follow proper instructions as to the administration of medication.
  - a. The provider shall store medications in an area inaccessible to children.
  - b. Medications stored in a refrigerator must be stored collectively in a spill proof container.
  - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child . Records must include the date and time of each administration,

the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.

7. The provider shall establish practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions . The provider may obtain this guidance directly or through current published materials regarding exclusion and return to the family child care.
8. The provider may release a child only to the child's parent or individual who has been authorized by the child's parent.
9. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
10. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.
13. Pets and animals.
  - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
  - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
  - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.



- e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
  - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
- 14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the family child care and shall empty, clean, and sanitize wading pools daily.
  - 15. All swimming pools used by the children must be approved annually by the local health unit.
  - 16. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-08-22. Records.**

- 1. A copy of this chapter must be kept on the premises and available to staff members at all times.
- 2. The provider shall maintain the following records:
  - a. The child's full name, birth date, current home address, legal names of the child's parents, and the business and personal telephone numbers where they can be reached;
  - b. A written statement from the parents or legal guardian authorizing emergency medical care;

- c. Names and telephone numbers of individuals authorized to take the child from the family child care;
  - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child; and
  - e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity. This assessment shall be completed annually.
3. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
- a. Authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess written authorization from the child's parent. The family child care shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of a provider's license.

- 1. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.

2. Authority to discipline may not be delegated to or be administered by children.
3. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A child may not be isolated in a locked room or closet.
4. A child may not be punished for lapses in toilet training.
5. A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion when addressing a child or when in the presence of a child. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
6. A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
7. A staff member may not use deprivation of snacks or meals as a form of discipline or punishment.
8. A staff member, household member, or any other adult in the family child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
9. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
10. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-08-24. Specialized types of care and minimum requirements.**

##### **1. Infant care.**

###### **a. Environment and interactions.**

- (1) A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, such as being held, rocked, talked with, or sung to.
- (3) The staff members responsible for caring for or teaching children or emergency designee shall respond promptly to comfort an infant's or toddler's physical and emotional distress:
  - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
  - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the family child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- (6) The provider shall ensure that infants are not shaken or jostled.
- (7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- (1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider.

- (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.
- (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- (5) The provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the family child care, if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the family child care.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a

note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket, a pacifier, and a security item that do not pose a risk of suffocation to the infant.
- (6) The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) The provider shall ensure that each infant has an individual infant blanket or infant sleep sack.
- (8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The provider shall check on sleeping infants regularly or have a monitor in the room with the sleeping infant.

## **2. Night care.**

- a. Any family child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.

- c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
  - (1) Pillows and mattresses have clean coverings.
  - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
  - (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.
  - (4) Each bed or cot has sufficient blankets available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-25. Minimum requirements for care of children with special needs.** A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

- 1. When children with special needs are being cared for, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-26. [Reserved]**

**75-03-08-27. Effect of conviction on licensure and employment.**

1. An applicant or provider may not be, and a family child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, staff member, or household member and any child cared for by the family child care, a provider, emergency designee, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child; or
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, provider, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the



applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-08-28. Child abuse and neglect decisions.** A provider shall ensure safe care for the children receiving services in the provider's family child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider and to the regional director of the human service center or the director's designee for consideration and action on the application or license. Each applicant, provider,

emergency designee, and staff member in the family child care shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-08-29. Correction of violations.**

1. A provider shall correct violations noted in a correction order within the following times:
  - a. For a violation of section 75-03-08-09, subsections 2, 7, and 10 of section 75-03-08-14, or section 75-03-08-23, within twenty-four hours.
  - b. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
  - c. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
  - d. For all other violations, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the provider.
3. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child

care until the violation has been corrected or for five days, whichever is longer.

6. The provider shall inform the parent of each child receiving care at the family child care and each staff member how to report a complaint or suspected licensing violation.
7. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
8. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

#### **75-03-08-30. Fiscal sanctions.**

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of subsections 1, 2, and 9 of section 75-03-08-14; subsection 3 of section 75-03-08-21.1; or section 75-03-08-23 for each day that the provider has not verified correction, after the allowable time for correction of violations ends.
2. The department shall assess a fiscal sanction of fifteen dollars per day for each violation of section 75-03-08-09; subsections 8 and 10 of section 75-03-08-14; or subsection 13 of section 75-03-08-21.1 for each day that the provider has not verified correction, after the allowable time for correction of violations ends.
3. The department shall assess a fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the provider has not verified correction, after the allowable time for correction of violations ends.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-07.4, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

**75-03-08-31. Appeals.** An applicant or provider may appeal a decision to deny or revoke a license. A written appeal must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing will be conducted in the manner prescribed by chapter 75-01-03.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-10